

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

CRL.A.No. 705 of 1998()

CC.24/1996 of JUDL.MAGISTRATE OF FIRST CLASS-II, MUVATTUPUZHA
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APPELLANT/COMPLAINANT:

O.M.JOHN, S/O. MARKOSE, OLICKAL HOUSE,
MARIKA KARA, PALAKKUZHA VILLAGE,
MUVATTUPUZHA TALUK.

BY ADVS. SRI.V.PHILIP MATHEW
SRI.BIJU BALAKRISHNAN
SRI.BIJU VARGHESE

RESPONDENTS/ACCUSED & STATE:

1. SREENIVASAN, S/O. SANKARAN,
CHATHAMPILLIL, PAMPAKKADA,
ONAKKUR VILLAGE, MUVATTUPUZHA.
2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P. RAVEENDRA BABU -R2
SRI.ANIMON A. JOHN -R1

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 20/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 705 OF 1998

Dated this the 20th day of March, 2007

JUDGMENT

This appeal is filed against the judgment in C.C.No.24 of 1996 on the file of the Judicial First Class Magistrate's Court II, Muvattupuzha.

2. The case of the appellant - complainant was that the first respondent - accused had borrowed from him an amount of Rs.95,000/- and issued Ext.P1 cheque dated 11.11.1995 towards discharge of the said liability and that when the cheque was presented to the bank for encashment, the same was dishonoured for want of sufficient funds in the account of the first respondent. After complying with the statutory provisions, the appellant filed the complaint alleging commission of offence under Section 138 of the Negotiable Instruments Act, 1881. To prove the case against the first respondent, the complainant himself was examined as PW.1. Two other witnesses were also examined and Exts.P1 to P8 were produced. No witness was examined on the side of the defence, but Ext.D1 pass book was produced. On closing the evidence of

the complainant, the first respondent was questioned under Section 313 Cr.P.C. Denying the allegations in the complaint, the first respondent stated that he had no transaction with the appellant and that the cheque in question was not issued by him. The first respondent further stated that he had not even signed Ext.P1 cheque. Considering the entire facts and circumstances of the case, the trial court found that the appellant failed to prove any transaction between the appellant and the first respondent. The trial court also found that the appellant failed to prove that Ext.P1 cheque was signed by the first respondent or that the cheque in question was issued for any consideration which was received by the first respondent. On the above finding, the trial court acquitted the first respondent.

3. This Court heard the learned counsel appearing for the appellant and perused the records made available before this Court. It is to be noted that the case set up by the appellant was that the first respondent had borrowed an amount of Rs.95,000/- from him. The specific case of the first respondent was that he had no transaction with the appellant as alleged in the complaint. At the same time, the first respondent admitted that he had a partnership business with one Shaji and that the appellant who was also one of the partners had later parted with the business. His further case was that the cheque in question might have been issued during

the partnership business. The first respondent had also not admitted that he had signed Ext.P1 cheque and the complainant also did not succeed in proving the handwriting or the signature found in the cheque. In the above circumstances, this Court is of the view that the appellant failed to prove the case against the first respondent. Hence, the judgment of the court below requires no interference by this Court.

The Crl. Appeal is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.APPEAL NO.705/1998

JUDGMENT

20TH MARCH, 2007.